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DECISION



21388
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Pugany

FILE: B-205562

DATE: April 5, 1982

MATTER OF: Conrac Corporation

DIGEST:

1. Bid protest, filed after bid opening, alleging that solicitation option provisions are ambiguous, is timely since protester was unaware of facts forming basis of protest until after bids were opened.
2. Where protester's interpretation of an IFB provision in effect takes it out of its context in the IFB Schedule, and is inconsistent with the use of a certain "Evaluation of Options" clause in the IFB, the interpretation is not reasonable and provides no basis for concluding that IFB was ambiguous.
3. Bidder's failure to submit prices for option items renders its bid nonresponsive.

Conrac Corporation protest the rejection of its bid as nonresponsive and the proposed award to another bidder under invitation for bids (IFB) No. F09603-81-B-0245, issued by the Warner Robins Air Logistics Center, Robins Air Force Base, Georgia for a quantity of aircraft tubing bending machines and related data. Conrac contends that its bid was improperly rejected as nonresponsive and that as the low bidder it is entitled to the award. For the reasons discussed below, we deny the protest.

The solicitation was issued on September 18, 1981 and three bids were received. The required items, together with related data, were set forth as follows in the IFB's schedule, as amended:

<u>ITEM NO.</u>	<u>SUPPLIES/SERVICES</u>	<u>QNTY/UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
0001	3441-00-896-8601 Bending Machine, Aircraft Tubing in accordance with Section C herein.	15 EA		
0002	Data (ALIN 1001-1002) in accordance with Attachment "1".			
	1001 Technical Publi- cations Offeror shall complete one or more of the following:	1 LO		
	1001AA - <input type="checkbox"/> Offering on Alternate Nr. 1 (Commercial Data in accordance with AFAD 71-531-(19)A, attached); 60 sets at \$_____ per set and total amount of \$_____.			
	[Alternates No. 2 and 3 omitted]			
	* * * * *			
	1002 Validation Record	1 LO		
	Option items which may be exercised pursuant to Sec- tion H-7.			
0003	Option Quantity (Same as Item 0001)	1-15 EA		
0004	Data (ALIN 1001) in accordance with At- tachment "1".			
	1001AA Commercial Data in accordance with AFAD 71-531-(19)A, attached.	2-30 SE		

Conrac bid \$31,750 per unit (which was properly extended) under Item 0001 and "\$ -0-" per data set under Item 0002, Alternate 1. It did not enter any unit or total prices for option Items 0003 or 0004. Similarly, a second bidder who offered a unit price of \$36,000 under Item 0001, did not enter prices for the option items. A third bidder offered \$34,850 per unit under Items 0001 and 0003 and \$50 per data set under Items 0002 and 0004.

Conrac telephoned the contracting agency a week after bids were opened and inquired as to the status of the bids. The contracting officer advised Conrac that its bid had been rejected as nonresponsive because the firm failed to bid on the option quantities. We received Conrac's protest of this determination the following day.

Conrac's protest centers on the words "Same as Item 0001" which appear beside Item 0003. The protester states that when it prepared its bid, it interpreted this language to mean that the price for the option quantity--Item 0003--must be the same as for Item 0001. Since it had already entered a unit price of \$31,750 for its machine under Item 0001, the protester asserts that it felt that was "sufficient" and that the entering of a price for Item 0003 would be "redundant." Similarly, the protester states, since under Item 0002 it had offered to supply 60 data sets at no charge, it felt it "redundant" to enter the same bid for the option quantity of data sets under Item 0004.

The protester argues that in view of these circumstances, its bid should be evaluated as offering unit prices of \$31,750 and "no charge" for Items 0003 and 0004, respectively. Under this evaluation, the protester would be the low bidder. If its bid is non-responsive, the protester asserts, it is only because the bid form was ambiguous and misled the protester (and possibly one other firm) as to how its bid was to be entered.

The Air Force states that the notation "Same as Item 0001" did not relate to the price to be offered but was intended solely as a description of what was to be supplied under Item 0003; the "same", or identical, machine described under Item 0001. The agency states that there was no requirement in the IFB that option prices be the same as for the initial quantities and that the IFB Schedule was arranged so as to permit bidders to offer different prices for the option quantities if they wished. Although the agency argues that Conrac's protest is untimely insofar as it contends that the solicitation was ambiguous, it also does not agree that there was an ambiguity and maintains that the protester's failure to enter prices for the option quantities made its bid nonresponsive, as we have held in decisions such as JBS, Inc., B-201207, March 18, 1981, 81-1 CPD 211 and Ainslie Corporation, B-190878, May 4, 1978, 78-1 CPD 340. We think the protest was timely filed but agree with the Air Force on the merits and therefore deny the protest.

As for timeliness, the Air Force argues that the complaint that the IFB was ambiguous is one based upon an alleged impropriety in the solicitation apparent prior to bid opening and therefore should have been filed prior to bid opening in order to be timely under our Bid Protest Procedures. 4 C.F.R. § 21.2(b)(1) (1981). As Conrac points out, however, not until it was informed that its bid had been rejected did it become aware that it and the Air Force attached different meanings to "Same as Item 0001" and knew the basis for its protest. We agree with the protester and consider its protest to be timely because it was filed with our Office the day after Conrac learned of the rejection of its bid.

An IFB is ambiguous only if two or more reasonable interpretations of it are possible. Klean-Rite Corporation, B-189458, September 28, 1977, 77-2 CPD 237. Conrac's interpretation of the IFB as not requiring bidders to enter prices for Items 0003 and 0004 rests entirely on the notation within Item 0003 that it was "Same as Item 0001." This notation appears on the IFB Schedule beneath the

heading "SUPPLIES/SERVICES", not beneath "UNIT PRICE" or "AMOUNT". All of the other entries beneath "SUPPLIES/SERVICES" unquestionably are brief descriptions of each item. To read "Same as Item 0001" as referring to price, and not as descriptive material, ignores the placement of that language in the schedule.

The protester's interpretation that the same price had to be bid for both the initial and option quantities of an item also directly contradicts the provisions of the solicitation and the Defense Acquisition Regulation (DAR) which relate to this IFB.

Section M of the IFB, "Evaluation Factors for Award", paragraph M-8, incorporated by reference the "Evaluation of Options" clause found at DAR § 7-2003.11(b). This clause provides in part that "Bids and proposals will be evaluated for purposes of award by adding the total price for all option quantities to the total price for the basic quantity." The use of this clause is governed by DAR § 1-1504(c), which states that the "option quantity may be considered in the evaluation for award of a firm fixed-price contract * * *" providing certain determinations are made before the IFB is issued. "In such cases," section 1-1504(c) directs, "the solicitation shall contain an Evaluation of Options provision substantially as set forth in 7-2003.11(b)." The significance of this is that DAR § 1-15-2 (d) states:

"Solicitations normally should allow option quantities to be offered without limitation as to price, and there shall be no limitation as to price if the option quantity is to be considered in the evaluation for award pursuant to 1-1504." (Emphasis added.)

Therefore, to read "Same as Item 0001" as placing a limitation as to price conflicts with the use in this solicitation of the DAR § 7-2003.11(b) Evaluation of Options clause.

Accordingly, we conclude that the protester's interpretation of the IFB was not reasonable, that the IFB was not ambiguous, and that the Air Force is correct in its position that it has no bid from the protester for Items 0003 and 0004, thereby rendering the bid nonresponsive. See JBS, Inc. and Ainslie Corporation, supra.

The protest is denied.

for *Milton J. Ainslie*
Comptroller General
of the United States